

SENATE BILL REPORT

SHB 1298

As of February 26, 2014

Title: An act relating to implementing recommendations of the sunshine committee.

Brief Description: Implementing the recommendations of the sunshine committee.

Sponsors: House Committee on Government Operations & Elections (originally sponsored by Representatives Springer, S. Hunt, Ryu and Pollet; by request of Public Records Exemptions Accountability Committee).

Brief History: Passed House: 3/04/13, 97-0; 2/13/14, 96-0.

Committee Activity: Governmental Operations: 3/28/13, 4/01/13 [DPA, DNP]; 2/25/14.

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Majority Report: Do pass as amended.

Signed by Senators Roach, Chair; Benton, Vice Chair; Braun and Rivers.

Minority Report: Do not pass.

Signed by Senators Hasegawa, Ranking Member; Conway and Fraser.

Staff: Samuel Brown (786-7470)

Background: Public Records Exemptions. The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure. Public records include legislative records, defined as the correspondence, amendments, reports, minutes of meetings, transcripts or records of hearings or supplementary written testimony, or data filed with legislative committees or subcommittees.

Today there are over 300 specific references in the PRA or other statutes that remove certain information from application of the PRA, provide exceptions to the public disclosure and copying of certain information, or designate certain information as confidential.

The Public Records Exemption Accountability Committee (Sunshine Committee), created by the Legislature in 2007, is charged with reviewing all exemptions from public disclosure.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Members of the Sunshine Committee must include two representatives appointed by the Governor, two appointed by the Attorney General, four members of the public, and four members of the Legislature. The Sunshine Committee meets several times per year to discuss the exemptions and recommend the repeal or amendment of any exemption. For each public disclosure exemption, the Sunshine Committee must provide a recommendation as to whether the exemption should be continued without modification, modified, scheduled for sunset review at a future date, or terminated. The Sunshine Committee must report its recommendations to the Governor, the Attorney General, and the appropriate committees of the Legislature annually.

Guardians Ad Litem. Under any proceeding related to terminating a parent-child relationship, the courts must appoint a guardian ad litem for any child. A guardian ad litem is an individual appointed by the court to represent the best interests of a child or incapacitated person involved in a case in superior court. Persons wishing to be a guardian ad litem must apply to the guardian ad litem program in each county. Counties must maintain background information, which is updated annually, for each guardian ad litem in the program. The background information must be provided to the parties or their attorneys involved in the action. The portion of the background information record containing the results of the criminal background check and the criminal history may not be disclosed to the parties or their attorneys, and may not include background information that includes identifying information that may be used to harm the guardian ad litem.

Personal Information. Certain personal information contained in the files of an agency is exempt from public inspection and copying under the PRA:

- credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by another law;
- the names, residential addresses, residential telephone numbers, and other individually identifiable records relating to a vanpool, carpool, or other ride-sharing programs or services, except to other persons who apply for ride-matching services and need the information for purposes of ride sharing; and
- personally identifying information of persons who acquire and use transit passes or other fare payment media, except to entities responsible for payment of the cost of acquiring or using a transit pass or other fare payment media for the purpose of preventing fraud, or to the news media when reporting on public transportation or public safety.

Law Enforcement and Investigative Information. Certain information relating to investigative, law enforcement, and crime victims is exempt from public inspection and copying, including the following:

- information revealing the identity of child victims of sexual assault, stated as the child victim's name, address, location, or photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator; and
- information contained in the statewide gang database.

Proprietary Information. All examination and proprietary reports and information obtained by the Washington Pollution Liability Insurance Program related to soliciting bids from insurers and in monitoring the insurer may not be disclosed.

Applications for Public Employment. Applications for public employment, including the names of applicants, resumes, and other related materials are exempt from public inspection and copying under the PRA.

Market Conduct Examination Reports. The market conduct examination report held in the Office of the Insurance Commissioner (OIC) is confidential and not filed for public inspection until after the hearing. Once adopted, the report is held private and confidential for five days, after which OIC may open the report for public inspection. OIC may withhold any examination or investigation report for so long as it deems it advisable.

Ethics Boards and Legal Defense Funds. There are three ethics boards with jurisdiction over state officers in Washington: the Commission on Judicial Conduct, the Legislative Ethics Board, and the Executive Ethics Board. The ethics boards can investigate, hear, and determine complaints for alleged violations on the state's Ethics Act and impose sanctions when appropriate. Generally, no state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business, transaction, or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

Legal defense funds are sometimes used to defray legal costs when a person becomes subject to civil, criminal, or administrative proceedings during a campaign, in an electoral context, or in the performance of their public duties.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Amendment): Public Records Exemptions. Based on the recommendations of the Sunshine Committee, the following changes are made to public disclosure and copying of records.

Guardians Ad Litem. The prohibition on disclosure of information from a guardian ad litem background check to the parties and their attorneys is removed. The background information record for each guardian ad litem is available for public inspection and copying, subject to the court's discretion. Additional information must be included in the guardian ad litem background information record:

- any connection with an organization involved in the placement of children;
- the number of appointments as a guardian ad litem or court-appointed special advocate in other states;
- the name of any counties in any state where the person was removed from a registry due to a grievance action; and
- any complaints regarding the person, unless proven false.

Personal Information. The exemption related to personal information is amended to clarify that personal account balances, transactional information concerning an account, access codes, passwords, and social security numbers are exempt from public inspection and

copying. Disclosure of information regarding participants in a rideshare program is limited to the participants' names, general locations, and email addresses. Information identifying a purchaser of a transit pass or smart card cannot be disclosed to the news media when reporting on public transportation or safety.

Law Enforcement and Investigative Information. Language is added clarifying that identifying information related to a child victim of sexual assault includes, but is not limited to, the child's name, address, location, or photograph. Information contained in a local or regionally maintained gang database is exempt from disclosure.

Proprietary Information. Information obtained by the Director of the Washington Pollution Insurance Liability Program is public and subject to disclosure except in the case of proprietary reports or information.

Applications for Public Employment. Applications for public employment are exempt from disclosure subject to the following conditions:

- the applications of finalists applying for the highest management position in an agency with confidential reference information removed or redacted are not exempt from disclosure; and
- application materials not exempt from disclosure must be available to the public after the finalists are selected, but before the agency makes its decision.

Market Conduct Examination Reports. OIC must disclose market conduct examination reports for public inspection and copying five days after the report is adopted, unless a court order stays publication.

Legislative records are defined as the correspondence, amendments, reports, minutes of meetings, transcripts or records of hearings or supplementary written testimony, or data filed with legislative policy, fiscal, or operational committees or subcommittees, and are subject to public inspection and copying unless a specific exemption applies.

Ethics Defense Trust Funds. A state officer may establish an ethics defense trust fund (trust fund) and name a trustee if the state officer is subject to an internal legislative investigatory proceeding or complaint alleging a violation of the Ethics Act relating to the state officer's official duties.

Trust Fund Organization and Use. Only one trust fund may be maintained at any one time. The trust fund must be in a single exclusive account at a bank, mutual savings bank, savings and loan association, or credit union doing business in Washington. The maximum contribution by any person per year to a trust fund is the same as the campaign contribution limit per person per election cycle established by the Public Disclosure Commission (PDC) for candidates for statewide executive office. All contributions must be deposited into the trust fund account within three working days after receipt. Account records must be kept for a minimum of two years.

The proceeds from the trust fund may not be utilized for personal uses. However, state officers are allowed to accept contributions to the trust fund. The proceeds of the trust funds may be used to:

- defray legal expenses and pay monetary penalties incurred by the state officer as a result of a complaint filed or issued for an Ethics Act violation;
- defray costs reasonably incurred in administering the trust fund, including but not limited to costs incident to the solicitation of funds;
- discharge any tax liabilities incurred as a result of the creation, operation, or administration of the trust fund; and
- defray or discharge legal expenses, penalties, costs, or liabilities incurred before the trust fund was established if the legal expenses, penalties, costs, or liabilities are related to the complaint proceedings for which the trust fund was established.

Trustee Regulations and Responsibilities. The trustee may not be a member of the family of or an employee of the state officer. The trustee is responsible for the following:

- the receipt and deposit of contributions to the trust fund;
- the authorization of expenditures and disbursements from the trust fund; and
- the performance of other tasks incident to the administration of the trust fund.

Trust Fund Termination. A trust fund established may be terminated by the state officer who established the trust fund or the terms of the trust agreement. A trust agreement may provide that a trust fund is terminated not later than six months following the completion of any authorized payments. Following termination of a trust fund, the trustee may not accept contributions to or make expenditures from the trust fund. Not later than 30 days after a trust fund is terminated, the trustee must return any monies remaining in the trust fund to contributors on a pro rata basis.

Reporting Requirements. The trust fund agreement, contributions, expenditures, and other transfers of monies to or from the trust fund must be reported to the PDC once per month, within ten days after the completion of the month, for all transactions occurring in that month. Failure to report as required is a violation of the Fair Campaign Practices Act. Reports filed with the PDC are subject to public disclosure.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

Testimony From 2013 Regular Session.

PRO: The bill as passed the House was the product of hearing, testimony, and decisions the House made with regard to the recommendations we received from the Sunshine Committee. It passed out of committee and off the floor unanimously. The Sunshine Committee supports the bill as it came over from the House, but asks that the method of contact for people in ride-sharing programs be technology neutral. We may not have email in a few years, so we'd like the language to be technology neutral.

CON: The exemption for medical malpractice claims information harkens back to a 2006 agreement when we did medical malpractice reform so we could have a better idea of what is happening around medical malpractice. Part of that agreement was to submit information in a confidential manner. This is somewhat going against that agreement. Some entities not required to report will choose not to if there is no protection. OIC's report will not be complete because people will no longer share the information.

OTHER: We support the exemption of local gang databases, because that is a good law enforcement tool and we do not want that data shared. We have concerns about disclosure of applications for top management positions, because it reaches a long way down into county government offices. It may have a chilling effect on recruitment for those positions.

Testimony From 2014 Regular Session.

CON: This would create an invasive environment for volunteer guardians ad litem. There is a rigorous process, including interviews and training, for certification as a guardian ad litem. Releasing this information would be detrimental – there would be fewer volunteers to advocate for vulnerable children and create safety concerns. Ninety-eight percent of parents in dependency proceedings have issues with substance abuse, violent crimes, or sexual abuse.

There are concerns about OIC losing voluntary reporting of closed medical malpractice claim information, because insurers will not want their data made public. This will compromise OIC's ability to provide information to policymakers. Without the discretion to withhold market conduct reports, it will be necessary to frontload staffing to encourage rehabilitation of troubled insurers and support policyholders. OIC has only withheld one examination report, and believes that it assisted in fully rehabilitating the insurer.

There is concern that the language requiring disclosure of applications would apply to chief deputies, and there is a chilling effect on applications, particularly those coming from at-will positions. The information of people not selected for the job ought to remain private. Releasing information about applicants also leads to second-guessing of agency selections based on resumes. Many things come up during the interview that lead to the selection of a candidate for a position.

OTHER: The gang database clarification piece and protection of juvenile victims of sexual assault make sense. Agencies need the best pool of candidates for open positions, and the changes in the striking amendment may hinder the ability to do so. If a person is concerned about their current employment finding out about them applying for another job, the likelihood of them applying for a new position is decreased.

Federal rules for FBI background checks require that the information only be used for the purposes requested, such as the licensing process. The background check information cannot be disseminated outside the agencies. Requiring full disclosure may prevent agencies from having access to these records.

Persons Testifying:

Persons Testifying From 2013 Regular Session.

PRO: Representative Springer, prime sponsor; Rowland Thompson, Sunshine Committee.

CON: Lisa Thatcher, WA State Hospital Assn.

OTHER: Candice Bock, Assn. of WA Cities; Monty Cobb, WA Assn. of County Officials.

Persons Testifying From 2014 Regular Session.

CON: Anne McEvoy, Grays Harbor County CASA Program Manager; Jennifer Harley, YWCA Clark County CASA; Kacy Scott, OIC; James McMahan, WA Assn. of County Officials; Brian Enslow, WA State Assn. of Counties.

OTHER: David Buri, Eastern WA University; Rob Huss, WA State Patrol; Candice Bock, Assn. of WA Cities.